

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DEREK SLOANE, 07-A-1140  
AKA, DERRICK SLOANE,

Plaintiff,

-vs-

BORAWSKI, et al.,

Defendants.

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STIPULATION OF SETTLEMENT  
AND DISCONTINUANCE  
PURSUANT TO RULE 41(A)

**Docket No. 12-CV-25**

WHEREAS, plaintiff, Derek Sloane (07-A-1140) aka Derrick Sloane ("plaintiff"), filed a Complaint on or about November 11, 2012, alleging that defendants had violated plaintiff's rights during plaintiff's incarceration in the New York State Department of Corrections and Community Supervision system; and

WHEREAS, defendants answered the complaint and denied all allegations that their conduct violated plaintiff's constitutional or other rights; and

WHEREAS, the parties are interested in resolving the issues alleged in the complaint in the above-captioned action ("Action"), and have negotiated in good faith for that purpose; and

WHEREAS, the parties hereto have agreed to settle this action pursuant to the provisions of Rule 41(a) of the Federal Rules of Civil Procedure; and

WHEREAS, no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the above-entitled action and the same hereby is discontinued on the merits, with prejudice, without costs to either party as against the other; and

WHEREAS, the Department of Corrections and Community Supervision, as the Department having supervision of defendants, Officer Joe Mulla and Officer J. Brynarski,

alleged to have caused the injuries herein, have approved the settlement of this action under the terms and conditions set forth below; and

WHEREAS, defendants Officer Joe Mulla and Officer J. Brynarski do not admit any wrongdoing but approve settlement for the convenience of all interested parties; and

WHEREAS, the parties hereto have entered into this Stipulation of Settlement and Discontinuance, in connection with the settlement of this action; and

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned, plaintiff and the attorneys of record for all of the parties in the above-entitled action as follows:

1. That no person not a party has an interest in the subject matter, the above-entitled action is hereby settled upon payment of the sum of two thousand eight hundred and fifty dollars (\$2,850.00) and is discontinued with prejudice as to all defendants. Payment shall be made in two checks. The first check in the amount of three hundred and fifty dollars (\$350) will be made out to the Western District of New York c/o Marc A. Schulz, Esq. of Hurwitz Fine, P.C. and mailed to 424 Main Street, Suite 1300, Buffalo, NY 14202. A second check in the amount of two thousand five hundred dollars (\$2,500) will be made out to plaintiff c/o Marc A. Schulz, Esq. of Hurwitz Fine, P.C. and mailed to 424 Main Street, Suite 1300, Buffalo, NY 14202.

2. In consideration of the payment of the sum set forth in paragraph 1, the plaintiff hereby releases the defendants, Officer Joe Mulla and Officer J. Brynarski, and any and all current or former employees of the Department of Corrections and Community Supervision, in their individual and official capacities, and their heirs, executors, administrators and assigns, and the State of New York and the Department of Corrections and Community Supervision, and any of its agents and assigns, from any and all claims, liabilities and causes of action from the

beginning of the world to the execution of this agreement, including but not limited to the circumstances set forth in the complaint in the above-entitled action, (i.e. claims relating to or arising out of any alleged violation of plaintiff's constitutional rights, and all other causes of action and claims of liability).

3. In further consideration of the payment of the sum(s) set forth in paragraph 1, plaintiff hereby waives, releases and forever discharges defendants and any and all current of former employees of the Department of Corrections and Community Supervision, in their individual and official capacities, and their heirs, executors, administrators and assigns, and the State of New York and the Department of Corrections and Community Supervision, and any of its agents and assigns, from any and all claims, known or unknown, arising out of the plaintiff(s) Medicare eligibility for and receipt of Medicare benefits, and/or arising out of the provision of primary payment (or appropriate reimbursement), including cases of action pursuant to 42 U.S.C. §1395y(b)(3)(A) of the Medicare, Medicaid and SCHIP Extension Act of 2007.

4. That payment of the sum set forth in paragraph 1 is subject to the approvals of all appropriate State officials in accordance with the provisions for indemnification under Public Officers Law Section 17. Plaintiff agrees to execute and deliver to counsel for defendants all necessary or appropriate vouchers and other documents requested with respect to such payment.

5. That payment of the amounts referenced in paragraph 1 will be made within one hundred and twenty (120) days after the approval of this Stipulation of Settlement by the Court and receipt by defendants' counsel of a copy of the so-ordered stipulation along with any further documentation as required herein, unless the provisions of Executive Law § 632-a apply to the plaintiff and the payment hereunder constitutes "funds of a convicted person" under the Son of

Sam Law, in which event, the one hundred and twenty (120) day payment period shall be extended by an additional thirty (30) days to allow for compliance with that law.

6. That in the event that the aforementioned approvals in paragraph 4 of all appropriate State officials in accordance with the provisions for indemnification under Public Officers Law Section 17 are satisfied, but payment is not made within the 120 day or 150 day period set forth herein, interest shall begin to accrue on the outstanding principal balance at the statutory rate on the 121<sup>st</sup> day after court approval or the 151<sup>st</sup> day after court approval if the provisions of Executive Law § 632-a apply to plaintiff(s).

7. That each party shall bear its own costs and fees relating to this proceeding and the costs and fees shall be hereby waived by the parties against each other.

8. That nothing contained herein shall constitute an admission by defendants Officer Joe Mulla and Officer J. Brynarski, individually or in their official capacity, that defendants deprived the plaintiff, Derek Sloane (07-A-1140) aka Derrick Sloane, of any right, or of failing to perform any duty under the Constitutions, Statutes, Rules, Regulations or other laws of the United States or the State of New York.

9. That this Stipulation of Settlement and Discontinuance and any Order entered thereon shall have no precedential value or effect whatsoever and shall not be admissible in any other action or proceeding as evidence or for any other purpose except in an action or proceeding to enforce this Stipulation of Settlement and Discontinuance.

10. Plaintiff represents and warrants that he is not a Medicare recipient, has never been on Medicare or on Social Security Disability, that no conditional payments have been made by Medicare and that he does not expect to be a Medicare recipient within the next 30 months.



11. That plaintiff agrees that the defendants Officer Joe Mulla and Officer J. Brynarski, the Department of Corrections and Community Supervision, and the State of New York shall not be responsible for any liens of any kind which may have attached to the proceeds from this settlement and further that plaintiff Derek Sloane (07-A-1140) aka Derrick Sloane, agrees that he will defend, indemnify and hold harmless the defendants Officer Joe Mulla and Officer J. Brynarski, the Department of Corrections and Community Supervision, its officers, agents and employees and the State of New York for the satisfaction of any such liens.

12. In confirmation of the agreement herein, plaintiff and the undersigned attorney for defendants to this action set their signatures below.

Dated: ~~Ulster~~, New York  
~~October 4~~, 2016  
November

Derek Sloane (07-A-1140); Derrick Sloane  
Plaintiff  
Westchester County Correctional Facility  
10 Woods Road  
Valhalla, NY 10595

By: Derek Sloane  
Derek Sloane (07-A-1140); Derrick Sloane

Dated: Buffalo, New York  
~~October 16~~, 2016  
November

Marc A. Schulz, Esq.  
Hurwitz & Fine, P.C.  
424 Main Street  
Buffalo, NY 14202

By: Marc A. Schulz  
Marc A. Schulz, Esq.  
Attorney for the Plaintiff

Dated: Buffalo, New York  
~~October~~ 15, 2016  
*November*

ERIC T. SCHNEIDERMAN  
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State of New York  
Attorney for the Defendants  
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By:

  
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Ryan L. Belka, Esq.  
*Assistant Attorney General*

Dated: Buffalo, New York  
\_\_\_\_\_, 2016

SO ORDERED:

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Hon. Kenneth Schroeder, Jr.  
*United States Magistrate Judge*